

Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

June 17, 2003

Dear Xxxxx:

This letter is in response to your letter dated January 8, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are doing our annual update of our tax files to be sure that we are aware of any new sales/use tax issues that would affect our company. We are a company that sells custom made signage into your state where we are currently registered. The signage is either attached to a building or a pole that is concreted into the ground. We contract with an independent contractor to install the signs. The installation charges are separately stated on the billing and include charges for surveys, permits, engineering and repairs. We also contract with an independent freight carrier to deliver the sign to the site for installation. All freight charges are separately stated on the billing. Both the installation and the freight are charged to the customer at a rate higher than our companies cost.

Our questions based on the above circumstances are as follows.

- At the point of sale should we as the seller be charging the customer sales tax or is this a case where we would pay use tax?
- If this is a case of use tax, how is the use tax calculated ?
- Should tax be charged on the freight?
- Should tax be charged on all components of the installation?
- If tax is charged on the freight and installation, do we charge on the selling price or only on the element of profit?
- Are we obligated to collect local taxes in your state?
- If we are obligated to collect the local tax should those taxes be remitted to the state or the locality?
- Do you have any special rules or exemptions that apply to your state relating to our situation?

- Please provide any applicable code sections that would apply to signage, installation and freight for our future reference.

We look forward to your response to our inquiries on or before January 31, 2003. Please direct your response to the address above. Thank you for your time.

DEPARTMENT'S RESPONSE:

A person who sells signs that have commercial value (i. e., value to persons other than the purchasers) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out "real estate", "insurance," or "hamburgers," and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. See 86 Ill. Adm. Code 130.2155 regarding vendors of signs. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450. The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would have no commercial value to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act and the sign vendor would be considered a serviceman. See generally, 86 Ill. Adm. Code 140.101.

All of the above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

In regards to your questions concerning freight, as a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax in retail sale situations. See, 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately agreed to apart from the selling price of the tangible personal property sold, and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

Signs that are attached to poles that are set in concrete or that are inserted into a cutout in the building and are attached to electrical wiring are considered to be permanently attached to real property. The discussion on construction contractors, above, would apply to these situations.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk